



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0854; FRL-9904-50-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of the 2002 Base Year Emissions Inventory for the Liberty- Clairton Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As a revision to the Pennsylvania State Implementation Plan (SIP), Environmental Protection Agency (EPA) is approving the 2002 base year emissions inventory for the Liberty- Clairton nonattainment area for the 1997 annual fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS or standard) (hereafter “the Liberty-Clairton Area” or “the Area”). EPA is also approving revisions to the Allegheny County Health Department (ACHD) regulations, which were submitted by Pennsylvania Department of Environmental Protection (PADEP). These regulatory revisions included the following amendments to ACHD regulations, which became effective on May 24, 2010: The addition of the levels of the 1997 annual PM_{2.5} standard and the 2006 24-hour PM_{2.5} standard, and the related references to the list of standards and the addition of the definition of “PM_{2.5}.” These actions are being taken under the Clean Air Act (CAA).

DATES: Effective Date: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2011-0854. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at velez-rosa.emlyn@epa.gov.

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I. Background

The formal SIP revision submittal, prepared by ACHD, was submitted by PADEP on June 17, 2011. The SIP revision included the 1997 annual PM_{2.5} NAAQS attainment plan for the Liberty-Clairton Area, a 2002 base year emissions inventory for purposes of meeting the requirement of section 172(c)(3) of the CAA, the transportation conformity motor vehicle emissions budgets (MVEBs), and certain revisions to ACHD regulations. This SIP revision is described in further detail in section II of this rulemaking action.

On November 7, 2011 (76 FR 68699), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth in Pennsylvania. In the NPR, EPA proposed conditional approval of the 1997 annual PM_{2.5} NAAQS attainment plan for the Liberty-Clairton Area (the “attainment plan”). EPA proposed conditional approval because the attainment plan included air quality modeling that relied on emissions reductions from the Clean Air Interstate Rule (CAIR), which was problematic because at the time CAIR was no longer in place. EPA had promulgated the Cross State Air Pollution Rule (CSAPR) on August 8, 2011 (76 FR 48208) to replace CAIR. As part of this NPR, EPA also proposed to approve the amendments to ACHD regulations included in the June 17, 2011 SIP revision, which added the definition of PM_{2.5} and the level of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. No public comments were received on this NPR.

On October 25, 2013 (78 FR 63881), EPA determined that the Liberty-Clairton Area had attained the 1997 annual PM_{2.5} NAAQS, based on quality-assured and certified ambient air quality data for the 2009-2011 and 2010-2012 monitoring periods. This “clean data determination” suspended the requirement for the Liberty-Clairton Area to submit an attainment demonstration, reasonably available control measures (RACM), reasonable further progress

(RFP), and contingency measures related to attainment of the 1997 annual PM_{2.5} NAAQS, for so long as the Area continues to attain the 1997 annual PM_{2.5} NAAQS.

On November 18, 2013, PADEP submitted a letter requesting to withdraw the sections of the June 17, 2011 SIP revision pertaining to the suspended planning requirements for the Liberty-Clairton Area as a result of EPA's determination of attainment for the Area. Specifically, PADEP requested to withdraw all portions of the June 17, 2011 SIP revision, except for the portions pertaining to the 2002 base year emissions inventory and the revisions to the ACHD regulations, which are discussed in section 2 (Regulatory Changes), section 6 (Emissions Inventory), and appendix F (Stationary Point, Area, Nonroad, and Mobile Emissions Inventories) of the SIP submittal. As a result of PADEP's November 18, 2013 letter, EPA has no statutory obligation to take further action on the portions of the June 17, 2011 SIP revision that have been withdrawn. Therefore, in this rulemaking action, EPA is only approving of the June 17, 2011 submittal, the 2002 base year emissions inventory and the submitted revisions to ACHD regulations.

II. Summary of State Submittal

As discussed in this rulemaking action, the 2002 base year emissions inventory was submitted by PADEP as part of the June 17, 2011 SIP revision. The base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_x), volatile organic compounds (VOC), PM_{2.5}, coarse particles (PM₁₀), ammonia, and sulfur dioxide (SO₂). In accordance with 40 CFR

51.1008(b), PADEP selected 2002 as the base year for the emissions inventory. EPA has reviewed the results, procedures and methodologies for the 2002 base year emissions inventory submitted by PADEP and finds them approvable. Further analysis of the emissions inventory development can be found in the June 17, 2011 SIP submittal and in EPA's October 5, 2011 technical support document (TSD) included as part of the docket for this rulemaking action. *See* Docket ID Number EPA-R03-2011-0854.

The SIP submittal also included the following amendments to ACHD regulations, which became effective on May 24, 2010: (1) The addition of the 1997 annual PM_{2.5} standard level of 15 µg/m³, the 2006 24-hour PM_{2.5} standard level of 35 µg/m³, and the related references to the list of standards in ACHD article XXI section 2101.10 and (2) the addition of the definition of "PM_{2.5}" to ACHD article XXI section 2101.20. These regulatory amendments are described in sections 2 and 6 and appendix F of the June 17, 2011 SIP submittal. EPA's rationale for approving the described SIP revisions was provided in the NPR and will not be restated here.

III. Effects of Recent Court Decisions

On January 4, 2013, in *Natural Resources Defense Council v. EPA*, the DC Circuit remanded to EPA both the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 PM_{2.5} Implementation Rule" or "Implementation Rule"). *See* 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 annual PM_{2.5} NAAQS pursuant solely to the general implementation provisions of subpart 1 of part D of Title I of the CAA (subpart 1),

rather than the particulate-matter-specific provisions of subpart 4 of part D of Title I of the CAA (subpart 4). As a result, the D.C. Circuit Court remanded EPA's Implementation Rule and instructed EPA "to repromulgate these rules pursuant to subpart 4 consistent with this opinion." Significantly, the Court's decision remanded the rules to EPA and did not vacate them. In a future rulemaking action, EPA intends to respond to the Court's remand and to promulgate new implementation regulations for the PM_{2.5} NAAQS in accordance with the requirements of subpart 4. In the interim, EPA will proceed to review attainment plans that have already been submitted but are not yet approved where appropriate.

EPA has two longstanding general guidance documents that interpret the 1990 amendments to the CAA, commonly known as the "General Preamble" and the "Addendum," that make recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas including those of subpart 4.¹ In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM₁₀ requirements."² Section 172(c)(3) of the CAA requires that states submit a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area. In the General Preamble, EPA stated that section 172(c)(3) applies for purposes of subpart 4, which itself

¹ See "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (57 FR 13498, April 16, 1992) (hereafter, General Preamble). EPA notes that it has issued additional guidance for attainment plans for PM₁₀ in particular, including extra requirements for areas classified as "serious" nonattainment areas under subpart 4. See "State Implementation Plans for Serious PM₁₀ Nonattainment Areas, and Attainment Date Waivers for PM₁₀ Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (59 FR 41998, August 16, 1994) (hereafter, Addendum).

² See 57 FR 13538.

contains no additional emissions inventory requirements for purposes of PM₁₀.³ Thus, subpart 4 adds no additional emissions inventory requirements.

EPA's remanded 1997 PM_{2.5} Implementation Rule required states to meet emissions inventory requirements, including a statewide emissions inventory of direct PM_{2.5} and all PM_{2.5} precursors, any additional emissions inventory information needed to support an attainment demonstration and RFP requirements, and a baseline (*i.e.* base year) emissions inventory suitable for the SIP planning requirements for the area at issue.⁴ As EPA explained in the 1997 PM_{2.5} Implementation Rule, in order to ensure that States provide the information necessary for SIP planning, including the need to evaluate which PM_{2.5} precursors a state should regulate in a given nonattainment area, the requirements relating to emissions inventories include a requirement that States must provide emissions information for direct PM_{2.5}, SO₂, NO_x, VOCs, and ammonia.⁵

EPA believes that the D.C. Circuit Court's decision in *NRDC v. EPA* does not affect the emissions inventory requirements for the 1997 annual PM_{2.5} NAAQS. The D.C. Circuit Court's remand of the 1997 PM_{2.5} Implementation Rule to EPA with instructions to repromulgate implementation regulations consistent with subpart 4 would not result in additional emissions inventory requirements under subpart 4 because none exist. The D.C. Circuit Court's comments on addressing PM_{2.5} precursors consistent with subpart 4 requirements also would not compel a different approach with respect to emissions inventories from that which EPA required under

³ See General Preamble, 57 FR 13539. EPA notes, however, that under subpart 4 requirements states may need to submit updated emissions inventories to support later SIP submissions, such as SIP submissions to address the requirements for serious areas under section 189(b)(1), or the requirements for an extension of the serious area attainment date under section 188(e).

⁴ See 40 CFR 51.1008.

⁵ See PM_{2.5} Implementation Rule, 72 FR 20648. EPA noted that the obligation to address all of the scientific precursors of PM_{2.5} was a separate requirement needed to support various regulatory purposes, including the evaluation of whether relying on the rebuttable presumptions for precursors was correct in a given area.

subpart 1. EPA's prior approach under subpart 1 already obligated states to include emissions of direct PM_{2.5}, SO₂, NO_x, VOCs, and ammonia in such inventories, and provided no presumptions to exclude precursors from inventories. To the contrary, the emissions inventory requirement includes these precursors to assure adequate information to inform decisions about what pollutants to regulate for purposes of attaining the NAAQS in a given area.

As part of EPA's November 7, 2011 NPR, EPA proposed approval of Liberty-Clairton Area's submission with respect to emissions inventory requirements.⁶ In that NPR, EPA explained that the Liberty-Clairton Area's emissions inventory information was consistent with EPA's guidance and correctly included the emissions of direct PM_{2.5}, SO₂, NO_x, VOC, and ammonia.⁷

Additionally, EPA provided a discussion of the sources of information for emissions from stationary sources, area sources, and mobile sources in the Liberty-Clairton Area and an explanation supporting its proposed finding that the State's approach was appropriate. No comments were received for this NPR.

Because the emissions inventories, submitted by PADEP as part of Liberty-Clairton Area's attainment plan for the 1997 annual PM_{2.5} NAAQS, already included emissions of direct PM_{2.5}, SO₂, NO_x, VOC, and ammonia, EPA concludes that there is no need to reexamine the emissions inventories for the Liberty-Clairton Area. EPA finds that the process used to develop the 2002 base year emissions inventory for the Liberty-Clairton Area is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission

⁶ See 76 FR 68699, at 68701.

⁷ For further details, see the TSD document entitled "Technical Support Document (TSD) for Liberty-Clairton PM_{2.5} Nonattainment Area: State Implementation Plan (SIP) Attainment Demonstration and Base Year Inventory," dated October 5, 2011. The TSD is available in the docket online at www.regulations.gov, Docket Number EPA-R03-OAR-2011-0854.

inventories with respect to the 1997 annual PM_{2.5} NAAQS.

IV. Final Action

EPA is approving into the Pennsylvania SIP the 2002 base year emissions inventory for the Liberty-Clairton Area for the 1997 annual PM_{2.5} NAAQS, which was submitted as part of the June 17, 2011 submittal. EPA is also approving into Pennsylvania's SIP revisions to article XXI, sections 2101.10 and 2101.20 of ACHD regulations for the addition of the definition of PM_{2.5} and the levels of the 1997 annual PM_{2.5} and the 2006 24-hour PM_{2.5} standards. EPA is not taking action on the remaining portions of the June 17, 2011 submittal, as they were withdrawn by PADEP by a November 18, 2013 letter.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action, which approves the 2002 base year emissions inventory for the Liberty-Clairton Area for the 1997 annual PM_{2.5} NAAQS and revisions to ACHD regulations of the PM_{2.5} definitions and levels, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: December 9, 2013

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN--Pennsylvania

2. §52.2020 is amended by:

a. Revising the table in paragraph (c)(2) by:

(i) Revising the entry for Article XXI citation 2101.10.

(ii) Adding another entry for Article XXI citation 2101.20.

b. Revising the table in paragraph (e)(1) by adding entries at the end of the table for the 2002 Base Year Inventory for the 1997 Annual PM_{2.5} NAAQS.

The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(2) * * *

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Part A – General				
* * * * *				
2101.10	Ambient Air Quality	5/24/10	[Insert	Addition of PM _{2.5}

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
	Standards (Except: PM ₁₀ —County & Free silica portion; Pb (1-hr & 8-hr avg.); settled particulates, beryllium, sulfates, fluorides, and hydrogen sulfide)		Federal Register publication date] [Insert page number where the document begins]	standards.
2101.20	Definitions	5/24/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Addition of “PM-2.5” definition.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submital date	EPA approval date	Additional explanation
* * * * *				
2002 Base Year Emissions Inventory for the 1997 Annual PM _{2.5} NAAQS	Liberty-Clairton PM _{2.5} Nonattainment Area	6/17/11	[Insert Federal Register publication date] [Insert page number where the document begins]	52.2036(q)

3. Amend § 52.2036 by adding paragraph (q) to read as follows:

§ 52.2036 Base year emissions inventory.

* * * * *

(q) EPA approves as a revision to the Pennsylvania State Implementation Plan the 2002 base year emissions inventory for the Liberty-Clairton 1997 annual fine particulate matter (PM_{2.5}) nonattainment area submitted by the Pennsylvania Department of Environmental Protection on June 17, 2011. The base year emissions inventory includes emissions estimates that cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. The pollutants that comprise the inventory are PM_{2.5}, nitrogen oxides (NO_x), volatile organic compounds (VOCs), ammonia (NH₃), and sulfur dioxide (SO₂).

[FR Doc. 2013-30870 Filed 12/31/2013 at 8:45 am; Publication Date: 01/02/2014]